IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2007

CORAM :

THE HON'BLE MR. JUSTICE S.TAMILVANAN

A.S.No.845 of 1996

1. D.Ramani Mohan (Deceased)
2. R.Parimala
3. Swetha Prakash
4. Sai Prakash
5. Annapoorani
6. R.Vinod Prakash .... Appellants/1st Defendant

(Appellants 2 to 6 are brought on record as LRs of the deceased sole appellant vide C.M.P.Nos.17949 and 17950 of 1996 dated 01.04.1997.)

vs.

1. The Commissioner
   Krishnagiri Municapality
   Krishnagiri Taluk,
   Dharmapuri District.

2. Indian Bank
   Head Office, Rajaji Street,
   Madras - 600 001. ..... Respondents/Plaintiff and 2nd Defendant

Appeal filed against the Judgment and Decree, dated 28.02.1995 made in O.S.No.66 of 1989 on the file of the Sub Judge, Krishnagiri.

For Appellant : Mr.M.Sathiyamoorthy
For Respondent : Mr.C.R.Muraliadharan for R1
Mr.G.Raja for M/s. Aiyar & Dolia for R2

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JUDGMENT

This appeal is directed against the Judgment and Decree, dated 28.02.1995 made in O.S.No.66 of 1989 on the file Subordinate Judge, Krishnagri.

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2. The appellant herein was the first defendant in the suit before the trial court. It is seen that the suit was filed by the first respondent herein against the appellant and also the second respondent, seeking a money decree for a sum of of Rs.61,858.80/- to be paid with 12% interest and costs. It is not in dispute that the appellant / D1 has been the owner of the property at D.No.67 (Old D.No.1E10), Bangalore Road, Krishnagiri Town within the municipal limit of the first respondent. The property tax for the II half of the year 1985-86 was fixed at Rs.15,464.70/- and for 1986-87, Rs.15,464.70/- was fixed as property tax, each for the I and II half year and for the I half year of 1987-88, the tax was fixed at the same rate and accordingly, as stated by the first respondent, Rs.61,858.80/- had to be paid as property tax. The suit was filed claiming the said amount to be paid with 12% interest and costs. It is seen that the first respondent / plaintiff had sent pre-suit notice, dated 28.12.1988 to the appellant, claiming the said amount, the copy of the notice has been marked as Ex.A.3.

3. The defence raised by the appellant / D1 before the trial court, as well as before this court is that the first respondent had not followed the procedure, which is applicable for Rent Control Proceedings, in deciding the rental value of the property, in order to calculate the property tax.

4. Mr.M.Sathiyamoorthy, learned counsel appearing for the appellant submitted that the trial court has not considered the factual aspects that the first respondent had fixed the property tax without following the guidelines applicable for fixing the rent under the Tamil Nadu Building (Lease & Rent Control) Act, 1960 and decreed the suit and therefore, the impugned Judgment and Decree are to be set aside.

5. It is not in dispute that the property has been mortgaged with the second respondent Indian Bank, that is why the second respondent has been arrayed as a formal party in the suit.

6. Learned counsel appearing for the appellant further contended that the theater had been are closed long back and the same was not run by the appellant during the period of assessment, however, the same was not considered by the trial court.

7. In this appeal, it is not in dispute that the appellant is the owner of the theater. As per the evidence of P.W.1, Revenue Inspector of the first respondent, the value of the building was assessed at Rs.16,00,000/- and after deducting 10% towards depreciation, the value was assessed at Rs.14,40,000/- and the site was measured at 1,106 Sq.metre and the value of the same would be Rs.541/- per Sq.metre, on the date of assessment and accordingly, the value of the land was computed at Rs.5,98,346/-. Again 10% was deducted towards depreciation and the balance was accordingly, arrived at. Based on the aforesaid

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calculation, the annual income of the property was computed at Rs.10,070/-. Based on which, property tax, including Education Tax and Library Cess was arrived at Rs.15,464.70/-

8. Ex.A.1 is the certified copy of the working sheet prepared by the Commissioner, Krishnagiri Municipality. Under Ex.A.1, working sheet of the property tax on the assessment of Central theater, details about the extent of the site, ground floor, auditorium value thereon and other details have been given with the details about the deductions towards depreciation by the first respondent.

9. It is seen from the evidence that the appellant / D1 had not produced supporting documents or working sheet to show, what was the extent of the site and the building and also the value thereon. Without furnishing the details, it is not open to the appellant, being the owner of the property, to agitate the assessment, merely by saying that the provisions of Section 4 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 was not followed.

10. It is seen that Ex.A.2 is the letter, dated 28.10.1987 sent by the appellant to the first respondent, whereby the appellant had requested the first respondent to reduce the tax on the ground that exorbitant tax has been assessed by the first respondent. In the said letter, the appellant has not specifically given any reason to reduce the assessment of tax and to show that the assessment was exorbitant.

11. As per Section 84 of the Tamil Nadu District Municipalities Act, 1920, (herein after referred to as Act) for the purpose of levy of property tax, every building shall be assessed together with its sites and other adjacent premises occupied as an appurtenance thereto. Such property tax shall be calculated as under :

a) Firstly, the basic property tax for a building shall be calculated at the rate fixed by the municipal council;
b) Secondly, the additional basic property tax for such building shall be calculated at the rate fixed by the municipal council and added to the basic property tax so arrived at under clause (a);
c) Thirdly, on the quantum arrived at under clauses (a) and (b) the concession having regard to the age of the building at the rate fixed by the municipal council shall be deducted and the amount so arrived at shall be the property tax payable in respect of any building for every half-year and shall be paid by the owner or occupier of such building within the half-year period.

12. It is not in dispute that for revising the property tax in accordance with the provisions of the Tamil Nadu District Municipalities Act and Rules made thereunder, subject to the provisions, there shall be an interval of five years between one general revision and another general revision and as such, there is no violation by the first

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respondent in fixing the property tax. In the instant case, it is seen that the first respondent has assessed the property tax, considering the value and the extent of the building together with its site and proper deduction for depreciation in the value has been given. It is not the case of the appellant that the revision was against the Section 85 of the Act.

13. As per the Act, aggrieved by the assessment of property tax, the appellant could have preferred appeal before the Taxation Appeals Committee under Section 89 of the Act. However, the appellant has not exhausted the remedy of appeal before the Taxation Appeals Committee.

14. In the impugned judgment, the trial court has discussed in detail, on the fixation of property tax by the first respondent. As per the evidence of P.W.1 and Ex.A.1, the extent of the ground floor is stated as 513.68/- per Sq.meters and the extent of the Auditorium with A/c. sheet is 519.85 Sq.meters and totally the extent is stated as 1105.53 Sq.meters. As per the value of the property, at the rate of Rs.541/- per Sq.meter, the value of the site was computed at Rs.5,98,346/-, of which 10% was deducted towards depreciation for the building. As stated earlier, the value of the building has been assessed at Rs.16,00,000/-. After giving 10% deduction towards depreciation, the value has been assessed at Rs.14,40,000/-. On the value of the property, 6% property tax has been assessed.

15. Though the appellant / D1 had disputed the receipt of the notice regarding assessment, it has been admitted by Ex.A.2, reply about the assessment notice received. With regard to the same, the trial court has given a finding that in view of the reply, receipt of Ex.A.1, notice issued by the first respondent had been admitted by the appellant.

16. Learned counsel appearing for the appellant would contend that the matter be remitted back to the trial court or the appellant be permitted to approach Municipal authorities, by way of revision, after allowing this appeal. Admittedly, the tax relates to the year 1985-86 second half year to 1987-88 first half year. At this juncture, it would not be proper for the court to set aside the impugned Judgment and Decree and remit back the same for fresh disposal by the trial court or to provide an opportunity to the appellant / D1 to approach the municipal authorities.

17. It is not disputed by the learned counsel for the first respondent that had there been an appeal before the Taxation Appeals Committee of the first respondent, Municipality, the committee could have considered the alleged grievance expressed by the appellant. It is seen that the first respondent had produced Ex.A.1, working sheet of property tax relating to the suit property. However, the date of the document is not available, though it was attested as true copy by the first respondent on 05.12.1992. As the first respondent has given the

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details about the area of the site, ground floor, other portions of the building and the value thereon with proper deductions, on the ground depreciation and computed the general tax, educational tax and library cess, without establishing the cases, the appellant cannot insist the court to remit back the matter for fresh disposal.

18. The appellant / D1 could have produced supporting documents, for disputing the correctness of the assessment and mere denial denial of the genuineness of the working sheet of property tax assessment would not be sufficient to allow this appeal. Further, only after receipt of notice from the first respondent, the appellant / D1 could have sent the letter, Ex.A.2, dated 28.10.1987. In such circumstances, the court is of the view that no case has been made out in favour of the appellant for setting aside the impugned Judgment and Decree and to remit back the same to the court below for fresh disposal or to provide an opportunity for preferring appeal before the Taxation Appeals Committee, constituted under the Tamil Nadu District Municipalities Act. Therefore, there is no error or infirmity in the impugned Judgment and Decree, directing the appellants herein to pay Rs.61,858.80/- towards property tax for the aforesaid period. However, this court is of the view that to meet the ends of justice, it would be proper to direct the appellants to pay only 6% interest, instead of 12% interest for the aforesaid amount, as per the impugned judgment and to pay proportionate costs. Accordingly, the appeal is disposed of. However, there is no order as to costs in this appeal.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

tsvn

To

1. The Subordinate Judge, Krishnagiri.
2. The Record Keeper,
V.R.Section, High Court, Madras.

1 cc To Mr.D.Shivakumaran, Advocate, SR.73097.

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